IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 585 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAH SUMATILAL AMBALAL

Versus

KAMLABEN N SHAH

Appearance:

MR PV NANAVATI for Petitioners

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/05/2000

CAV JUDGEMENT

#. This is defendants' appeal against the judgment and decree dated 15-2-1980 of City Civil Court, Ahmedabad decreeing the suit of plaintiff - respondent for recovery of Rs.5,225/- with interest at the rate of 6 % per annum on principal amount of Rs.4000/- from the date of the

suit till payment.

#. The plaintiff respondent filed a suit for recovery of Rs.5225/- including Rs.4000/- as deposit amount, Rs.1200/- as interest and Rs.25/- as cost of notice. The allegations in the plaint are that Mahendra Ambalal was son-in-law of the plaintiff. He and defendant No.2 Shah Sumatilal Ambalal were carrying on business in partnership in the name of defendant No.1. The firm was carrying on business as cloth merchant. The plaintiff deposited a sum of Rs.4000/- with the defendant No.1 on 5-12-1975, whereupon, the defendant No.2 had issued a receipt and agreed to pay interest at the rate of 15 % per annum on the aforesaid deposit. Interest was paid on the deposit upto 4-9-1976 and it was not paid thereafter. Mahendra Ambalal the partner of defendant No.1 and son-in-law of plaintiff expired on 30th November, 1976 and thereafter, the defendant No.2 was managing the affairs of the defendant No.1. The plaintiff through letters dated 5-4-1978 and 12-4-1978 requested the defendant No.2 to pay back the deposited amount with interest but with no result. Notice was also given to the defendant No.2 on 28-2-1978 demanding the balance dues. This notice was replied on 28-8-1978, wherein, the claim of the plaintiff was denied. Consequently, a suit was filed for recovery of the aforesaid amount.

#. The suit was resisted by the defendants on the ground that no money was deposited by the plaintiff on 5-12-1975 and that no entry was made regarding this deposit or payment of interest in the accounts books of the defendant No.1. Upon death of the plaintiff's son-in-law, her daughter filed a suit for dissolution of partnership and accounts which is pending and thereafter the plaintiff filed a false suit.

#. The trial court found that the plaintiff succeeded in establishing the deposit of Rs.4000/- with the defendant No.1 and further established her claim of Rs.1200/- by way of interest and further claim of Rs.25/- by way of notice expenses. Accordingly, the suit was decreed. It is therefore this appeal.

#. Shri P.V.Nanavati, learned counsel for the appellant has argued the appeal and assailed the judgment of the trial court on the ground that it is against the evidence on record inasmuch as the contents of the receipt dated 5-12-1975 Exh.15/1 have not been proved and mere proof of signature on the receipt would not entitle the plaintiff to a decree for suit amount. He further contended that the circumstances on which the suit was decreed are also

conjectural and against human conduct, hence, practically there is no evidence and no strong circumstances on the basis of which suit could be decreed. As against this, Shri Zaveri on behalf of the respondent contended that the suit was rightly decreed and no point of law is involved in this appeal.

#. I agree with the contention of Shri Zaveri that no legal point is involved in this appeal. It is thus to be seen whether the findings of fact recorded by the trial court are against the evidence on record or are perverse or are without any evidence on record. It is also to be seen whether circumstances mentioned by the trial court are acceptable or not ?

#. Normally findings of fact cannot be disturbed by the appellate court simply because it wishes to take a different view. Unless the findings of fact recorded by the trial court are against evidence on record or are based on no evidence or are perverse, interference on question of findings of fact even in first appeal is hardly justified. As indicated above, no legal point is involved in this appeal. It is therefore to be seen whether on facts the plaintiff succeeded in establishing her case or not ? I agree with the contention of Shri Nanavati that the plaintiff can succeed only on the strength of her case and evidence and not on the weakness in defence. This proposition of law is quite settled. However, if the evidence on record is examined, it can safely be said that the trial court committed no error in decreeing the suit.

#. The first evidence from the side of the plaintiff is the receipt Exh. 15/1. Shri Nanavati contended that the contents of receipt are not proved. The defendant No.2 in the witness box had even denied his signature on the receipt. The receipt Exh.15/1 has been affixed with the revenue stamp of Rs.0.10 ps. and this revenue stamp has been cancelled by Shah Sumatilal Ambalal by putting his signature thereon. Thus, the revenue stamp has been properly cancelled. Mere denial of the defendant No.2 regarding his signature on Exh.15/5 is hardly reliable. There is no evidence on record to show that the poor widow namely the plaintiff had forged the signature of the defendant No.2 on receipt Exh.15/1. So far as the contents of the receipt are concerned, strictly speaking, it is not proved but it is not a ground for dismissal of the suit. It has come in the evidence of the defendant No.2 that he is not in habit of writing any document and that all the documents on his behalf are written by his son Dixit and he used to sign on such documents. However

the defendant No.2 has stated that Exh.15/1 is not written by his son Dixit. His statement was referred at length by Shri Nanavati in the course of arguments. Certain questions were put to the defendant No.2 by the trial court at the end of the cross examination, wherein, he stated that the body of Exh.15/1 is not in the handwriting of his son Dixit. He further stated that the handwriting of contents of the receipt appear to be as those of my brother Mahendra Ambalal. In the next sentence, he changed his version and stated that these contents are not in the handwriting of his brother Mahendra Ambalal. In view of such contradictory and shifting stand taken by the defendant No.1 in reply to Court question, it can be said that he has suppressed the real fact and truth and has not come out with truth before the Court. Since the contents of the receipt were not written in presence of the plaintiff's witness Uttambhai Nagindas Shah, he could not have proved the contents. He has simply proved that the receipt was signed by the defendant No.2 in his presence.

#. There is nothing on record to suggest that the plaintiff has forged the receipt. The receipt has been written on the cash memo of the defendant No. 1. Regarding the cash memo of the defendant No.1, it could not be shown that it was surreptitiously taken away by the plaintiff or by the plaintiff's son-in-law who was a partner in the firm. It was not a detailed receipt but actually a note of deposit of Rs.4,000/- with the defendant No.1 and this amount was taken from the plaintiff by the defendant No.2. It has come in evidence of the plaintiff's witness Uttambhai Nagindas that the defendant No.2 went to the house of the plaintiff, accepted Rs.4,000/- from her and gave receipt Exh. 15/1 signed by him. There is nothing suspicious if the contents of the note were written earlier. After all, the deposit was suggested by the plaintiff's son-in-law who was not only partner of the defendant No. 1 but was also brother of the defendant No. 2 another partner of the defendant No. 1. In view of this close relationship between the parties, there was no reason for the plaintiff to prepare forged receipt. It was actually not detailed receipt but only a note of deposit and that is why it was not written even on full length of cash memo. On the other hand, it appears to have been written on half portion of the cash memo. Mahendra Ambalal could not be examined because he expired on 30-11-1976. Dixit, son of the defendant No. 2 has not been examined to deny that Exh. 15/1 is not in his handwriting. Hence in the circumstances, the plaintiff could not have adduced better evidence than oral evidence of Uttambhai Nagindas

Shah to prove the signature of the defendant No.2 on the receipt. The receipt therefore does not appear to be a suspicious document and it could be relied upon.

##. It may be mentioned that the receipt Exh. 15/1 is not negotiable instrument like pro note. Consequently, oral evidence also could be accepted and the oral evidence of Uttambhai Nagindas Shah fully supports the case of the plaintiff. The trial court has given cogent reasons for placing reliance upon the statement of Uttambhai Nagindas. I do not find anything in his cross examination to disbelieve him. Consequently, oral evidence of the plaintiff also supported her case. Simply because cash memo was used for issuing receipt, it cannot be said to be suspicious circumstance on which plaintiff's suit can be dismissed, nor it can be said that issuing receipt on cash memo is contrary to natural human conduct. Keeping in view the close relationship between the parties, such receipt on cash memo cannot be said to be against natural human conduct.

##. There is yet another cogent evidence from the defendant to support the plaintiff's case. Exh. 39 is the reply dated 8-4-1978 given to the plaintiff in reply to her letter. In this Exh. 39 given by the defendant No. 2, it is mentioned that the dues of the plaintiff are written on the paper of the credit memo of the defendant No. 1. Thus, this fact regarding plaintiff's dues has been admitted by the defendant No. 2. If nothing was deposited by the plaintiff with the defendant No. 1, there was no occasion for the defendant No. 2 to admit in his evidence that dues of the plaintiff were written on the paper of credit memo of the defendant No.1 which was intimated through Exh. 39. Thus, admission of the defendant No. 2 on the point is the best evidence in favour of the plaintiff which further supported her case.

##. The trial court has rightly discussed the argument of the defendants and concluded that there was nothing unnatural for the defendant No.2 to have prepared the contents of Exh. 15/1 earlier and it was signed after receiving the amount. Such conduct cannot be said to be against natural human conduct especially in view of close relationship between the parties and further in view of the fact that the defendant No.2 has admitted that he never used to write anything and that all the papers were written by his son Dixit and he used to sign the same.

##. It was next contended by Shri Nanavati that the defendants were not in need of money and as such, they were not expected to accept the deposit of Rs.4000/from

the plaintiff on 5-12-1975. The statement of the defendant No. 2 on the point was contradicted by his Munim Manilal Vadilal Shah who admitted in his cross examination that in S. Year 2032 the defendant No. 1 had taken deposit of Rs.25,000/- on 8-12-1975 from Jayantilal Lallubhai, Rs.5100/- by way of deposit on 10-12-1975 from Arvindkumar Rasiklal and Rs.2400/- by way of deposit on 11-10-1976 from Jesinghbhai Mansukhlal and these deposits were to be refunded with interest at the rate of 1 % per month i.e. 12 % per annum. Consequently, when two deposits were accepted by the defendant No. 1 from two persons on 8-12-1975 and 10-12-1975, it cannot be believed that on 5-12-1975, the defendant No.1 was not in need of money from the plaintiff. This circumstance therefore does not demolish the case of the plaintiff.

##. The trial court has rightly disbelieved the defendant No.2 on his denial regarding his signature on Exh. 15/1.

##. It was next contended by Shri Nanavati that if any amount would have been deposited by the plaintiff with the defendant No.1 firm, the entries of such deposits should have been made in the account books of the firm and payment of interest for few months as alleged by the plaintiff should also have been indicated in the account books. Normally the contention raised seems well founded but when the evidence is scrutinized, it is difficult to accept this contention. The trial court has rightly observed that a suit for dissolution of firm was subsequently filed by the widow of Mahendra Ambalal another partner of the firm and in that suit, inventory was ordered to be prepared. In the trial court, three versions were given by the defendant No.2 in his statement before the court as to the place where the accounts books were kept. The first version was that the account books were not kept in the premises of the shop and godown of the defendants when the inventory was prepared and that the account books were lying in the house of defendants' Munim Manilal Vadilal. The second version is that because the shop of the defendant No.1 is very small, only current account books remained with the Munim and that the books of accounts which were already written by Manilal Vadilal were kept in the shop of the defendant No.1. Another statement was given by the defendant No.2 that the books of accounts which were written by Manilal used to remain at his house in Magani Vughar Ni Pole. In view of these changing stands about the custody of the account books, it cannot be ruled out that the real account books were changed and manipulated

and new account books were prepared for the purposes of inventory in Civil Suit No. 587 of 1977 which was prepared in 1977. As such, in these circumstances, since the entries of account books regarding the principal amount deposited and some interest paid thereon are not appearing, it cannot be said that the plaintiff's case is suspicious and not proved. The genuineness of the account books produced before the trial court was therefore rightly suspected by the trial court.

##. Another contention of Shri Nanavati has been that Ankadas were not issued to the plaintiff and issuing of Ankada was usual practice when deposits were made with any business concern. The trial court has rightly considered this contention in correct perspective and in view of close relationship between the parties, it was rightly observed by the trial court that because of close relationship Ankada might not have been issued to the plaintiff.

##. Regarding payment of interest, the trial court found that the interest was paid for about 9 months from 5-12-1975. Mahendra Ambalal - the brother of the defendant No.2 and son-in-law of the plaintiff expired on 30th November, 1976. It is just possible that after that interest might not have been paid. However, since no receipt for payment of interest was obtained from the plaintiff, she could not have produced any better evidence except the oral evidence adduced by her. It was not a case where limitation was going to expire and therefore, this plea of payment of interest was taken to extend the period of limitation. On the other hand, admission of payment of interest for 9 months from 5-12-1975 proves bonafides of the plaintiff.

##. No other point was pressed. In the result, I do not find any error of fact or law in the findings recorded by the trial court. The suit was therefore rightly decreed by the trial court. The appeal in these circumstances is devoid of merits and is liable to be dismissed.

##. The appeal is hereby dismissed with no order as to costs.

Date : 09/5/2000 [D.C.Srivastava, J.]

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